

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEPHEN M. HUCKEBA,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:05-CV-1851-D
VS.	§	
	§	
ALLSTATE INSURANCE,	§	
	§	
Defendant.	§	

ORDER

After making an independent review of the pleadings, files, and records in this case, and the October 20, 2005 findings and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct and are therefore adopted.

After the magistrate judge filed his findings and recommendation, plaintiff Stephen M. Huckleba (“Huckleba”) filed on November 4, 2005 an application to proceed *in forma pauperis* and a “writ of mandamus.” The application to proceed *in forma pauperis* appears to be unnecessary, because the magistrate judge granted such leave by September 23, 2005 order. The court therefore denies the motion as unnecessary at this time.

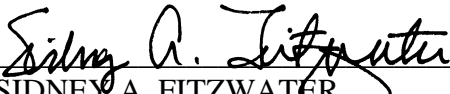
In Huckleba’s “writ of mandamus,” he seeks to amend his complaint to allege damages in excess of the minimum jurisdictional amount. The court treats the “writ of mandamus” as an amended complaint, filed as of right. Nevertheless, Huckleba still has not demonstrated that the court has subject matter jurisdiction over his case. First, as the magistrate judge explains in his findings and recommendation, the court lacks federal question jurisdiction. Second, the court lacks diversity jurisdiction. Even if the amount in controversy now exceeds \$75,000 (Huckleba says he is raising the amount *to* \$75,000, and refers to costs *up to* \$75,000, but the court will assume that

he is raising it above that amount), Allstate Insurance's citizenship is still based on that of its insured. Huckeba admitted in response to the magistrate judge's questions that he and the insured are both citizens of the state of Texas.

Accordingly, because the court lacks subject matter jurisdiction, this suit is dismissed without prejudice by judgment filed today.

SO ORDERED.

November 8, 2005.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE